XII

Two Tribal Law Cases (Documents)
(Wāḥidī Sultanate, South-West Arabia)

DURING a year in Ḥaḍramawt I was able to collect a number of legal documents which contain valuable material for a study of the social structure of the country. Amongst these are two groups of deeds relating to the Ḥawṭahs of al-Ḥāwī and Thibī, typical examples of the sacred enclaves of this part of Arabia. Another set of documents defines the rights of the townsmen of the Sūḳ quarter of Tarīm, with some references to the ceremonies connected with hunting the ibex, and I have various other documents relating to tribal cases, a house-sale deed, etc.

The cases which concern us at present are written in a mixture of colloquial and classical Arabic, conventional in form and difficult to interpret. The law upon which they are based is not sharī'ah, but tribal custom ('ādah), and there are references to usages which must be pre-Islamic but flourish still to-day. Apart from the importance of such material for constructing a picture of contemporary Arabian society, documents such as these may assist in the interpretation of the language and content of pre-Islamic inscriptions. They are a sample of material abundant in tribal areas but, of course, they are typical of a more primitive form of civilization than that of the Yemen and Ḥaḍramawt.[1]

The Wāḥidī Tribes and their Country

For detailed information on the Wāḥidī Sultanate, with accurate lists and descriptions of tribes and excellent geographical information, mostly not so far utilized by cartographers, C. von Landberg's *Arabica V* (Leiden, 1898), pp. 177–234, Pays des Wâḥidi, is invaluable. The best map of the area is H. Von Wissmann's new draft map of the Aden Protectorate, at present in MS. at the Royal Geographical Society. Use has been made of the Political Notebook for the district, where more recent events are concerned, but tribal and geographical data therein must be checked by *Arabica V*.[2]

[1] For the Yemen, see E. Rossi, Il diritto consuetudinario delle tribù arabe del Yemen, *Rivista degli Studi Orientali* (Roma, 1948), xxiii, 36 pp.

[2] Several travellers have described Wāḥidī country. A small literature exists on the Vienna Expedition at the beginning of the century. C. von Landberg's Die Hunde von 'Azzān und ihre Bestrafung durch die Engländer, *Eine Errinerung an die Südarabische Expedition* (München, 1903), might be consulted. For photographs, Freya Stark's books are useful.

Landberg's analysis absolves me from describing at length the social structure of the territory. Class divisions, in more or less descending order, include saiyids (with no temporal power), sultans, mashā'ikh, two sanctuary-khādims—a very ancient class—and the tribesmen. Below the fully honourable status come soldiers of the Sultan (usually, if engaged in trading, but not if acting as soldiers), ra'īyah, ḥawīk (weavers), ṣubyān, slaves, and outside this Islamic society the ancient but alien element of the Jews. The ra'īyah are sub-divided into various types, tradesmen, artisans, labourers, and even some rich merchants and camel-owners.

At Aṣba'ūn, in the Wādī Maifa'ah, about an hour's journey on foot from the pre-Islamic city of Naḳab al-Hadjar, the Wāḥidī sultanate has an administrative centre, under the qaim, Muḥammad bin Sa'īd al-Wāḥidī, from whom these cases were obtained. With his aid, that of the assistant political officer, Muṣṭafā Rif'at, and any Bā 'Awḍah tribesmen present, they were explained.

We are here concerned with two different tribal confederations, firstly in the land case, the Bā Rashaid section of Bā Baḥar, of the Nu'mān confederation. The Bā Rashaid have their tribal centre at Raidat Āl Rashaid, a little to the north and east of Aṣba'ūn, and live in the villages of Al-Salāmah, Ḥuṣn al-'Uṭair, Raḥṭān, al-Ḳurain, and Thafar. The Bā Baḥar is an ancient tribe, mentioned in Hamdānī's *Djazīrat al-'Arab*, etc. The other tribe in the case of the run-away wife, is the Bā 'Awḍah, of the Āl Dhiyaib branch of Ḥimyar. I have talked with most of the individuals whose names occur in the texts. Few can write more than their names at best, yet the documents abound in formulæ and technical terms, some of which one occasionally sees in ancient Arabic poetry.

Procedure

Each case has its fixed conventional procedure. In the reports of the qaim of Maifa'ah, we find the sās or ordering of procedure, the da'wā, plaint or accusation, the taḳwā or defence and reply, and the ḥukm, judgment, all set forth, though in the first instance, the land case, the ḥukm is not given, as it was *sub judice* at my visit.[1]

According to my informants there are three types of ḥukm.

[1] The term sās (asās) seems to be used in Iraq, though its actual technical application may vary a little from that in Wāḥidī territory. See Farīḳ al-Muzhir, *Al-Ḳaḍā' al-'Ashā'irī*, edited with notes by Nūrī Shams al-Dīn (Baghdad, 1941), pp. 23 and 135.

There is that which is called riḍā, agreement or consent, ḳaḍā, the decision of a judge according to the merits of a case, and ṣalāḥ or iṣlāḥ, settling out of court, or without going to court. When a case comes before the tribal judges, a meeting usually takes place in the room of a dār, and the case is conducted, often amidst much heated argument. I have seen such cases in Wāḥidī territory, and also remember vividly one held at my camp at Am-Fadjarah, in Ṣubaiḥī country, in 1940, attended by representatives of both contending tribes, with the hostages they had given in earnest of their intention of proceeding to court, the latter in fetters.

The Land Dispute

Two sections each claim certain rights over land in the Wādī Maifa'ah. The matter is brought before the qaim of Maifa'ah, the procedure agreed and witnessed. The plaint is made and the defence is set out.

نَقْل من الدَّعَاوِى الّذى تَصْدُر فى مَحْكَمَةْ مَيْفَعَه من البادِيَه

الأكرام

(١) وِثْر حَقّ السّاس

حضر عندى فى محكمة ميفعه العاقل على بن حَمَدْ بن لَعْجَمْ وقبيلته هل رَّشَيْد، وكذلك العاقل على بن سالم بن حمد وقبيلته هَلْ على بن حَمَدْ هل رَّشَيْد، وقدّموا محبوسين من الفريقَيْن بيد قايم ميفعه محمّد بن سَعيد الوَاحِدِى لبعضهم البعض فى ما طالبوا فيه فى حقايق الأطيان وتجادِيرها وغَلَلها وفى حدود الطّين ونهب وعَشَرَهْ وتوقيف، كُلَّيْن هَرْجَه له ولسانه له وساسه له بُلْغَ الطُّرُق، مُخَلَّف الدّم وشَايِم ولَايِم. هذا براس

الحكومه تُقدِّمه أو تُوَخِّره الى وقت ثانى صار بالقُنْع والرِّضا بين المذاكير، وكلّن منهم حَميل ورَديم على قبيلته. وعلى القائم ان يختار لنا حُكّام من روس عُقّال القبايل فى قواعد البلاد وسوالفها وسوَاسها، وكلّ رُكْبَه يُنْكِرها الحكَمَ هى معذوفه ما لها قُبُول من الجانبَيْن، وكلّ من جَاه فصل ولا تقبّله يتقبله العَدَلِى، وهو يقطع الغريم ومَن صابه صَوْب ولا بَدّاه فهو المربوع فى رجل محبوسه ومن ما قابل على وَعْدُه، وخذ واُنطا عند الحُكّام كلّ ما اِدَّعَوْه ايّاه واضح وما هو له ماضح.

وذلك بحَضْرة اَلْاَشْهَاد، المَنْصَب الشيخ عبد الله بن محمّد بَا قَادِر والعاقل حسين بن عمر با عَوْضَه، والعاقل على بن عَوَض بن لَكْرَشْ با عَوْضَه، والعاقل على بن حَمَد بن عوض بن ذِيَيْب با عَوْضَه.

(٢) دَعْوَى

دعوى عَلِى بن احمد بن لَعْجَمْ بن رشيد وقبيلته. ادَّعَا بالله وعندكم يا لَحْكَام أَنَّ لى مّال فى ساقِيَة الثُّوَيْجِع والْبِزَيْعَلَهْ بالعَطْف وأنّه سرح عليه وغلب عليه ومنع وكيلى وقَفَا على حقيقتى وله سنين عديده ويا من بعد ما قفا علا مالى إنّه جاب

لى عَشْرَهَ وحمّلنى اثنين قتول . وَاُصِيبَه وَاُلْزَمه من عند الله وعندكم يَاُلَحْكَام ببوش مالى وغلَلى . وعِنّى وَاُتْعِبْنِى بشُهُودى وَاُصِيبه بِاُلَحْمَال الثّقيله والعُبَر الجايره من عند الله وعندكم يا اُلَحْكَام .

(٣) تَقْوَى

اِتّقَا عَلِى بن سالم بِن رَّشَيْد. عندُ الله وعندكم يا اُلَحْكَام أن ساقِيَة النُّوَيْجِع والبِزَيْعَلَه بين هَل رَّشَيْد، وكُلَّيْن سارِح يِتَعَصَّم من تحت يدّى حِصّته بعوايد حَرْث مَيْفَعَه وأنّ على بن أحمد بن لَعْجَمْ وقبيلته غَلَبَوْا يتعصّمون جَيْز القُسوم وأنّهم يَبَوْن يرسمون عَلَىّ عاده ثانِيَه ، وأنّهم جَوْنِى حَرَّابه ضَرَّابه إلى مَطْرَحِى ، ويا من عَثَر إن عَثْرَتَه فى ظَهْرَه ؛ ويحمانى الله ، لا غلبت عَلَا عَاصِمَة مثل هل رَّشَيْد ، ولا يِلَزّمَنِى حاكم بالجَوْر والبُهْتان . وقدنى عند الله وعندكم يا اُلَحْكَام .

Copy of the cases which appear at the court of Maifa'ah from the honourable tribes.

(1) *A Document of Procedure*

The headman ('āḳil) 'Alī bin Ḥamad bin La'djam (1) and his tribe, the Ahl Rashaid (2), attended the court of Maifa'ah before me, and so also the headman 'Alī bin Sālim bin Ḥamad and his tribe the Ahl 'Alī bin Ḥamad Ahl Rashaid. They delivered over hostages from (each of) the two (contending) parties into the hands of the

qaim (3) of Maifa'ah, Muḥammad bin Sa'īd al-Wāḥidī (4), as a guarantee of one (tribe) to the other in the matter of the claims they maintain regarding the rights to cultivated lands, the imposition of a ban (5) thereon, the crops therein, and concerning the boundaries of the cultivated land, theft, provocation of quarrels, and forcible stoppage of cultivation (6). Each (tribe) has its (right of raising) a plea, of pleading its (case), and of having its procedure detailed, from beginning to end; apart from matters involving blood (7), and that which touches a man's honour (8). The latter rests with the Government (9) to decide whether to bring forward the matter, or postpone it to a later occasion.

(The afore-going) was agreed to the satisfaction and consent of the afore-mentioned (contracting) parties, and each of them is a responsible guarantor on behalf of his tribe. It is the duty of the qaim to choose judges for us from amongst the principal headmen of the tribes, in accordance with the laws, precedents, and customary procedure of the land (10). Any unfounded claim (or petition) which the judge disallows is (thereby) rejected, and shall find no acceptance from either party (of the two tribes). (In the case of) any party who has a decision preferred against him, but will not accept it, the pledge-holder will, notwithstanding, accept it, and he will pay the (successful) party to the suit (11). Whosoever has a sentence passed against him, but does not make settlement of it, must pay the (fine) four-fold before his hostage can be released (12). Whosoever has not presented himself in accordance with his promise (or appointment), nor made his plea and defended himself before the judges, all that they (his opponents) have preferred against him is valid, and not null and void.

This (took place) in the presence of the witnesses, the Manṣab the Shaikh 'Abdullāh bin Muḥammad Bā Ḳādir (13), the headman Ḥusain bin 'Umar Bā 'Awḍah, the headman 'Alī bin 'Awaḍ bin Lakrash, and the headman 'Alī bin Ḥamad bin 'Awaḍ bin Dhiyaib Bā 'Awḍah (14).

(2) *A Plaint*

The plaint of 'Alī bin Aḥmad bin La'djam bin Rashaid and his tribe.

He brings a plaint before (15) God, and you, oh judges, that I (16) have property in the water-channel of al-Nuwaidji' and al-Bizai'alah, in the Bend (17) (of the Wādī Maifa'ah), and that he (18) went out to

work in it, and took it over, and would not allow my agent (access to it), but disregarded my right, and has been doing so for a number of years. Then, subsequent to his disregarding my property, he picked a quarrel with me, and made me responsible for committing two murders. I therefore attaint him, and lay on him the responsibility, before God, and before you, oh judges, of plundering my property and my crops. So help me (19) and trouble me (to produce) my witnesses. For I attaint him (with the responsibility for) heavy burdens, and grievous troubles, before God, and before you, oh judges.

(3) *A Defence*

' Alī bin Sālim bin Rashaid (20) declares in his defence :—

Before God, and before you, oh judges, that the water-channel (21) of al-Nuwaidji' and al-Bizai'alah is (common property) amongst the Āl Rashaid, and each is eligible to receive his share from my hand, his portion being in accordance with the customs of cultivation at Maifa'ah, and that 'Alī bin Aḥmad bin La'djam and his tribe refused to take their shares like the (other) share-holders, but wished to prescribe another custom for me, and that they came to my place with hostile intent. Now, whosoever picks a quarrel, the (responsibility for) the trouble (resulting), falls on his own head, and, God protect me, I have not withheld his share (which is) the same as (that of) the Āl Rashaid. Nor will any judge hold me culpable of injustice or false accusations. I am before God, and before you, oh judges.

NOTES.

(1) La'djam, i.e. al-A'djam, a not uncommon name amongst the Aden Protectorate tribes.

(2) Pronounced Harrashaid.

(3) The placing of hostages in the hands of a third party, in earnest of the sincerity of both contending parties' intention of submitting their case to arbitration, is ordinary procedure in Arabia.

(4) Muḥammad bin Sa'īd al-Wāḥidī is a member of the Wāḥidī family which provides the Sultan for that group of tribal elements known as the Wāḥidī confederation.

A sultan (dawlah) in Southern Arabia is never an absolute monarch, or even a king in the ordinary sense, but stands rather in the position of hereditary mediator between a group of tribes associated together in a sort of large confederation; he acts too,

as their leader in matters arising between the confederation and the outside world. I suspect that the sultanate is really a development from the offices of ʿāḳil and ḥakam, which are themselves often hereditary. Sultans are probably of tribal stock, and those closely related to the ruling member of the family are respected, though not reverenced and feared like the Mashā'ikh. The poorer sultans, as a rule, enjoy but little consideration, and during our tour of Wāḥidī territory I met one sultan (of whom there are a great many as all their descendants are known by this title), a penniless beggar. This person arrived uninvited at every meal given by local men of influence in honour of Sultan Nāṣir, and would stuff pieces of meat left over into the leather bag he wore slung over his shoulder, taking them away to consume at leisure.

Some assert that the Wāḥidīs are of Turkish descent. Descent is also claimed from the Ḳuraish and from Ḥimyar, but whatever the case may be the Aden Protectorate sultans are physically indistinguishable from their tribesmen. I was told that the ancestor of the Wāḥidīs, by name ʿAbd al-Wāḥid, was an Ottoman Turk, a qaim of the Ottomans probably, about the time of the famous Ḥaḍramī sultan, Badr Bū Ṭuwairiḳ b. ʿAbdullāh b. Djaʿfar al-Kathīrī. The Faḍlī, I was told at ʿAzzān, is also Ottoman, and so is Sultan ʿAidarūs bin ʿAfīf al-Yāfiʿī; elsewhere I have heard it said that the ʿAwdhalī Sultan is of Turkish descent. A passage from the history of Bal-Faḳīh al-Shiḥrī described in "Materials for South Arabian History I", *Bulletin of the School of Oriental and African Studies* (1949), gives some credibility to the assertion that the ancestor of the Wāḥidīs flourished about this time. In the year 955 H. (1548 A.D.) the Sultan Badr went from Shiḥr to Ḥaḍramawt. After spending the ʿĪd al-Fiṭr in Saiwūn, he "set out for Shabwah", then, says the author:—

"There came to him Ibn ʿAbd al-Wāḥid, the Lord of Ḥabbān, to Shabwah, and asked him to go with him against certain enemies of his (i.e. Ibn ʿAbd al-Wāḥid's enemies) there, such as Bā Ḳab, the Lord of Yashbum, and Ibn Siddah. So the sultan (Badr) set out with him at the head of his troops, and he (Ibn ʿAbd al-Wāḥid) brought him up to the citadel (of Ḥabbān). Now, when Bā Ḳab heard, he fled to the mountains, but Ibn Siddah sent the faḳīh ʿAbdullāh Bā Makhramah (to him) with horses and breast-plates, and he (Badr) accepted (them) from him, and left him as he was in

his land. Bā Ḳab made peace with the sultan (Badr) in return for a (present of) breast-plates and money, but later did not pay what he had promised in full. So the sultan sent his soldiers to Yashbum, and they plundered and burnt it. Then the sultan returned to Shabwah."

وصله ابن عبد الواحد صاحب حَبَّان إلى شَبْوَه وطلبه المسير معه إلى خصوم له هناك مثل با قَب صاحب يَشْبُم وابن سِدّه فعزم معه السّلطان بجنده وطلعه المصْنَعَه فلمّا علم بَا قَب شرد إلى الجبال وأمّا ابن سِدّه فأرسل الفقيه عبد الله با مَخْرَمَه بخَيْل ودروع فقبل منه وتركه على حاله فى بلده وبا قب اصطلح هو والسّلطان على دروع ومال ثمّ لم يَفِى (sic) بما ضمنه فجهّز السّلطان عسكره إلى يَشْبُم فنهبوها وأحرقوها ثمّ رجع السّلطان إلى شبوه .

From this it seems the son of the founder of the dynasty was alive in 955 H. According to the political notebook he was named 'Abdullāh bin 'Abd al-Wāḥid and died in 998 H. (1589–1590 A.D.). We have evidence then that the dynasty was established in the first half of the tenth century H. I noticed on several occasions that members of the Wāḥidī family were addressed by others as Yā 'Abd al-Wāḥid, notwithstanding that their names were known to the speakers.

(5) For the process of imposition and removal of a ban, see C. Snouck Hurgronje, " L'Interdit Séculier (Rifgèh) en H'adhramôt," *Revue Africaine* (Alger, 1905), no. 256. Al-Fawā'id al-Sanīyah, f. 28*b* seq., notes a Sultan of Tarīm as interdicting a man from irrigating his fields till nearly ruined at the time the corn was in the ear. The man's prayer, however, brought a flood which saved the crop.

(6) Forcible stoppage of cultivation may be occasioned by a shot in the air, or at persons on their way to cultivate their fields accompanied by their animals, etc., or by firing at a man's servants or cultivators, or by taking his animals while he is looking.

I recall an incident in the Maifa'ah area when a tribesman stabbed someone's cows in the stomach, killing them. This strange act might perhaps be another method of forcible stoppage of cultivation.

(7) By blood, murder is meant, and perhaps also wounding, the latter being mentioned as a matter for the sultan's judgment in the 'Awdhalī tribal code.

(8) This phrase is common in Ḥaḍrami documents. In Ḥaḍramawt it has come to be applied to the levy made on the date-crop by tribesmen for their forcible protection of the crop from others. Here, however, it would seem to apply simply to matters which touch a man's honour, " that which shames and blames," and is used thus in its original sense. Into this category would enter presumably any dispute relating to a woman, or an attack on a protected person, etc.

(9) By " Government ", I presume the Wāḥidī Government is intended.

(10) It will be noticed that the qaim does not himself judge cases but makes the necessary arrangements for the normal processes of tribal law to come into operation.

(11) The pledge-holder ('adalī) may be a different individual from the judge (ḥakam), or they may sometimes be the same person. In this case, the qaim of Maifa'ah happened to be the pledge-holder. The sense seems to be that if one party, i.e. the losing party, rejects the decision of the judge, the pledge-holder will, at any rate, return the pledge of the successful party at the trial. The Aḥkām al-Man'ah (see following note), however, declares (fol. 66*b*): " If two men are in dispute for some reason, and each of them delivers a pledge to an Amīr, or to a judge (ḥākim), or to the Ḳāḍī, and the two go to law (taḥākam), and judgement is given (wadjab al-ḥaḳḳ) against one of them, the pledge of him against whom judgement is given is withheld (lazima) until he acquits himself (takharradj) of what he owes, and if he (the pledge-holder must be intended) delivers it, the (damages awarded by the) judgement fall upon the man who delivers (the pledge), except if the person in whose favour judgement has been made (ṣāḥib al-ḥaḳḳ) permits him to deliver (it)."

(12) That is to say the hostages handed over before the opening

of the trial. In the Kitāb al-Ādāb wa-'l-Lawāzim fī Aḥkām al-Man'ah of Aḥmad b. Yaḥyā al-Faḍl (740 H.) which I found in Tarīm, and which is described in " Materials for South Arabian History II ", *Bulletin of the School of Oriental and African Studies* (1950), much space is given to the definition of penalties for each offence or crime. These fines can be halved, doubled, quadrupled, or even charged eight times, according to the gravity of the circumstance.

(13) Shaikh 'Abdullāh is the manṣab of Ṣa'īd, my host for three days, a man of honesty and sterling character. He is known as Mawlā Ṣa'īd. Shaikh 'Abdullāh had, in his youth, run convoys of supplies through the Turkish lines to the British in Aden, and his son is a dresser in the Aden Government Guards. For a note on the manṣabate, see the appendix to the second part of this article.

(14) 'Alī bin Ḥamad of 'Azzān, a poet of the Bā 'Awḍah, one of our companions *de route*. He would compose, smoking a rishbah, and I have a long poem of his, on the twenty-eight stars of the agricultural year, in basīṭ metre. A curious feature of this case is that all the witnesses whose names figure at the end of this sās belong to the Bā 'Awḍah, although it is evidently concerned with the Bā Rashaid only, belonging to a different confederation. The one exception is the manṣab, who belongs to neither, but is of a Mashā'ikh family, and whose name would figure on all kinds of documents.

(15) The preposition might be rendered either " at God ", or " by God ". The phrase is reminiscent of naḥnu bi-'llāh thumma bika, We put out trust in God, then in thee, quoted by W. Wright, *Arabic Grammar* (Cambridge, 1933), ii, p. 163. Cf. A. Musil, *Manners and Customs of the Rwala Bedouins* (New York, 1928), 490, " tarâna blawbak (billâh w-bak) 'an flân." Behold we ask Allah and thee to protect us from so and so.

(16) Note the change of pronoun from " he " to " I ", both of course referring to 'Alī bin Aḥmad.

(17) Al-'Aṭf, used as a proper name, lying south of 'Azzān, running from it to Naḳab al-Hadjar and thence south. The region has at one time been heavily cultivated, and the old naḳab or channel of pre-Islamic times is still used ; it is a cut through a ridge west of the ruined city known as Naḳab al-Hadjar (lit. the cutting of al-Hadjar, the town).

(18) The pronoun must refer to 'Alī bin Sālim bin Rashaid of document 3.

(19) Help me to obtain justice by asking me to produce my witnesses, who will show that I am in the right.

(20) Pronounced Birrashaid. Landberg gives Rishaid.

(21) I suspect that the word sāḳiyah (water-channel) is here employed like bīr (well) in Ḥaḍramawt, to indicate not the channel or well itself, but the lands irrigated by it.

Glossary to the Text

N.B.—Gl. Dath. is C. von Landberg, *Glossaire Datînois* (Leiden, 1920–1942).

وِزْ pl. وُتُور. I also heard a variant وَتِيرَه. Syn. وثيقة. Used also in Wādī Ḥaḍramawt. *A written deed or document.*

سَاس pl. أَسْوَاس, whence, no doubt, سَوَاس. *Legal procedure, the analysis and arrangement of various charges contained in a single plaint.* One says: طرحت لك ساس *I have set forth the procedure for trial before you* (which must be agreed to, if the two parties are going to stand trial). مى ساس عليه *I have a right, or custom, against him.*

عاقل *Headman.* Gl. Dath., etc.

تَحْجِير pl. تَحَاجِير. Syn. of جِدْر in this sense, جَدْب. *The act of imposing a ban on fields, or preventing by some forcible means or threat of force, their cultivation in any way.* It seems derived from جدر in the sense of, *to wall, enclose with a wall.*

عَتْرَه *Dispute, quarrel.* Gl. Dath. 2266. Cf. Lane, لَا تَبْدَأْهُم بِالْعَتْرَة which he renders, *Begin not ye with them by war.* It seems to be a technical term for "*an incident*", and I have recorded it in the 'Awdhalī tribal code also. In doc. 2, *a cause of trouble.*

تَوْقِيف *Interdiction, stopping by force.* The usage is explained in the notes to the translation.

هَرْج Gl. Dath. *Conversation, Gespräch, Rede.* Syns. given by Wāḥidīs دَعْوَه plaint, كلام. See Landberg, *Festgabe* (Leiden, 1909), p. 28 f., 'Ārif al-'Arīf, op. cit., Glossary, p. 41.

بَلَغ الطُّرُق The sense of this phrase is obviously *to the limit of the roads,* but I cannot explain the form of بَلَغ unless it be a pl. of بالغ.

مُخَلَّف *Except, with the exception of.*

شَايِم This word is always used in the common phrase here شَايِم وَلَايِم. Cf. the classical شَامَ عَلَى *to draw ill-luck, evil fortune on.* Ṭāhir

b. al-Ḥusain al-'Alawī in his Maḳāmah fī Ahl al-Shirāḥah, says, hādhihi 's-sanah al-Kharīf illā shawm *This year the date-crop is a very little only.* شوم is said to mean شتم *a disgrace, insult.*

لايم One says, لوم عليك *a shame on you,* to a person, for instance, who is mean with a guest, or in any way infringes the canons of honourable conduct. Cf. Gl. Dath. لوم for allied senses. The jingle شايم ولايم means *anything that touches a man's honour,* and probably from that, *anything which it is his duty to protect.* Thence, no doubt, the term is commonly applied to shirāḥah, the protection of date-palms against a fee, so that شايم ولايم comes to have the sense of one's *rights over palm-plantations,* a tangible asset which could be bought and sold, in the Wādī Ḥaḍramawt at least, up to the British protectorate.

ردم Syn. of حميل وردم is ضامن, *guarantor,* though حميل can also mean *a supporter.* Gl. Dath. ردم *couvrir, boucher.*

حَكَم pl. احكام. Syn. حاكم pl. حُكّام *a tribal judge.*

سالف pl. سوالف. *Precedent, custom.*

رُكَبَه *Unfounded claim, baseless petition.* Cf. Gl. Dath. ركب عجانه *he pretends to be mad,* etc.

مندوفه *Refused, rejected.*

عَدَلِي *One who holds hostages or pledges, deposited by parties in earnest of their intention to procede to arbitration.* The *pledge* is عَدَل pl. عُدُول. Lane says: "The saying originally relating to the bloodwit (al-diyah), one says, لم يقبلوا منهم صَرْفًا ولا عَدْلًا *They did not accept from them a bloodwit, nor did they slay one man for him, of their people who had been slain.*" Here عَدل is said to mean *slaying a man for a man,* and صَرْف *the taking of a bloodwit.* See H. Klein, *Kapitel xxxiii der . . . Kašf al-Ġumma* (Hamburg, 1938), p. 25, where perhaps the word عدول should be understood in this sense.

قطع Gl. Dath. *décider le prix, payer.* My informants rendered the phrase, *acting on behalf of the man in whose favour the decision has been made.*

غريم pl. غُرَمَان. Here rendered as, *one of the two contending parties,* in this case the winning party. Lane says, *one upon whom lies the*

obligation of a bloodwit or the like, adversary in contention, litigant. It also seems to mean *responsible*, perhaps from the sense of *to pay.*

صوّب Syn. حكم. *judgment, decision.*

بدّا *Pay, clear, settle,* Gl. Dath. *payer une dette.* One says, بدّى دينك *Pay your debt.*

مربوع *Fourfold.*

رجل This is a conventional phrase, used also in the 'Awdhalī tribal code. A hostage's legs are shackled.

قابل Syn. حضر.

انطا *To give.* Gl. Dath. The phrase اخذ وانطا(ا) here means *made his plea and defended himself.* Cf. F. Krenkow, *The Grant of Land by Muḥammad to Tamīm al-Dārī*, Islamica (Leipzig, 1925), i, 530.

واضح *Valid.*

ماضح *Null and void.* Cf. Lane مضح عرضهُ *impute, accuse of a vice or fault, disgrace, dishonour.*

لكرش i.e. الاكرش *The one whose* كرش *(ventricule) stands out,* i.e. *a fat man.*

إدّعا Gl. Dath. *prétendre, soutenir.* One says, إدّعا فلان *So and so brought a plaint or accusation.* Cf. اتقى below. دعوى *a plaint, accusation.*

سانية *Water-channel.* Gl. Dath.

عطف *Wadi-bend,* here a proper name.

سرح *Go out to work in* (على). Gl. Dath.

غلب (على) Gl. Dath. *enlever, refuser.*

قفا (على) *Reject, disregard.* Gl. Dath. *injurier.* See *infra.*

يا No one could explain this word exactly. Some said it was superfluous (zā'idah). It occurs again, also in the taḳwā and in the da'wā of the second set of documents. It may perhaps be a simple introductory particle. One says يا خمسة يا ستة *either five or six.* It may have the sense of *as for, concerning,* and might be connected with the Class إيّا.

اصاب *To have a claim against, accuse, make responsible for.*

يوش باش One says, باش المال, i.e. تهيّه, cf. Gl. Dath.

يعين عان *To aid, assist.* This looks like a derivative from Stem IV of عون, with the disappearance of hamzah, as in case of اصاب, reported by Landberg, and *infra.*

بالحال i.e. بالاحال *Burdens, responsibilities.*

عِبْرَه *Trial, example.*

جَابِر *Heavy, great,* according to my informants, but perhaps *cruel,* in accordance with Gl. Dath., would be better. See also Lane.

اتّقى One says فلان اتّقا *so and so prepared to defend himself against an accusation.* تَقْوَى *A defence.*

سَارِح *Eligible, having the right, in a position to . . .* So my informants; but it may be used here in the sense simply of *being, becoming.*

تعصّم *To receive a share* (عاصة Syn. حِصّه, cf. text, *infra*).

حَرْث *Cultivation.* Gl. Dath., etc.

جِيْز *Like.* Gl. Dath., etc.

قِسم pl. قُسُوم *One who gets a dividend, share-holder.*

يَبَرْن from يِبَا, Syn. يَبْنَى.

عَذَر *To give a reason for offence.* Cf. Gl. Dath.

لزم *To make responsible.* Allied senses in Gl. Dath.

لَشْرَف i.e. الاشرف.

(To be continued.)

Two Tribal Law Cases (Documents)
(Wāḥidī Sultanate, South-West Arabia)

(Continued)

2

The Dispute over the Runaway Wife

The general procedure in this case is very similar to that of the aforegoing, but here we have the decision of the tribal muḳaddam (pl. maḳādimah) or headman. Bin 'Awzar's solution of the problem is, of course, very different from a legal decision in a European court to-day, but our methods would probably fail where decisions such as this are effective in obtaining justice. The two parties are constrained to produce other individuals to give evidence to clear or convict them, on an oath which, if false, they firmly believe will swiftly bring upon them the direst consequences.[1] Bin 'Awzar, however, envisages a possibility that neither party will be able to produce suitable evidence, and should this happen, he has instructed them to refer back the case to him.

It is clear from this case that the plaintiff is not acting from a sense of outraged sentiment, but for economic reasons, for dowries are high in Wāḥidī territory. Amongst the ra'īyah, dowries of 1,300 Maria Theresa dollars have even been known, but perhaps their dowries are higher than those of tribal women. In Ḥaḍramawt the peasant-cultivator pays a dowry of 60 to 100 riyals for a virgin bride, because she is a useful economic asset, working in the fields and house, but the mashā'ikh only pay about 35 riyals for a virgin shaikhah, and even the 'Alawī saiyids have a standard 40 riyals for a virgin bride, though by arrangement between the two families it

[1] Landberg has described how oaths are taken at the tomb of a saint: " On se range en cercle autour du coffin (tābūt), ou le simple tombeau (ḳabr), s'il n'y a pas de tābūt. Si le misdjid (mosque) ou la ḳubbah (domed tomb) sont petits, on s'aligne devant la porte. Lorsqu' il y a plusieurs personnes appelées à prêter serment, on commence d'abord par une marche autour du sanctuaire, en se plaçant deux à deux, les uns après les autres. On chante des marādjīz. Leur arrivée est signalée par des salves de fusil . . . Quelque saiyid ou shaikh est toujours présent à ces cérémonies pour empêcher que le sang coule, car l'excitation est toujours grande. Ce n'est pourtant qu' une partie remise; hors du territoire du walī la vengeance cherche sa victime jusqu'à ce qu' elle la frappe. Cette pratique de se purger d'une accusation moyennant le serment est la ḳasāmah des anciens Arabes (*Arabica V*, op. cit., pp. 141–2).

may be more. The reason stated for the strange practice of the upper classes in paying less for their brides than peasants, is that their women do far less work than a peasant woman, or even none at all.

(٤)

حضروا عندى فى مَحْكَمَة مَيْفَعه سالِم بن حُسَيْن لَشْرَفْ با عَوْظَه وعلى بن سالم با تُرَاب دُمَيْدِم با عوظه . وقدّموا محبوسين بيد قايم ميفعه محمّد بن سعيد الواحدى لبعضهم البعض فى نَقْد وحَقّ عند القبيله هَلْ حَمَدْ بِنْ ذِيَيْب على ما فى سوالفهم وقواعدهم وذالك فى حُرْمة سالم بن حسين با عوظه لَشْرَفْ ، وغيره نهب الغنم والرّاحله ؛ وَاُجِيب لهم قائم ميفعه ، حُكّام الّذى اختارهم من اهل با عوظه .

(٥)

(نقل) دَعْوَى سالم بن حسين

بَاللّه وعندك يا بن عَوْزَر إنّها سارت حُرْمَتى عند ابوها وإنّى تبعتها بيومها وطرحت عَدَلى فى ما تزتقر فيه حرمتى فى سَواس القبيله . وإنّه غلب با تُراب من عَدَلى ولا سَرّح حرمتى . وعِنّى وتَعِبْنى ؛ ويا ما نهبته على با تراب ، وهو مَقْفِى ، لا يَصيبُنى بقافِى على ما فى رَزيمة هل با عوظه .

(٦)

(نقل) تَقْوَى على بن سالم با تُراب

تَقْوَايْ يا بن عَـوْزَر إنّ عارِى جَـاتْنى بهـا هَدَّه وتَقْصُور وإنّه جانى بن لشرف وجلس لى، ووقّفت له بحرمته ويُسلّم ما عنده من سَلَب الحرمه الّذى تزتقر فيه الحرمه فى قواعد القبيله، وإنّه منع يسلِّم. وقدنى عند اللّه وعندك يا مُنْصف الحقّ.

(٧)

(نقل) حكم بن عَوْزَر با عوظه

وجب فصـل بين بن لَشْرَف واهـل با تُراب. وجبت شـاهدَيْن على بن لشرف، عَـدْلَيْن لا خُـصْمَا ولا قُسْمَا، يُعَرَّضون على قائم ميفعه، يشهدون لله وبين إيدات الله، شَهاده جازِمـه لازمه، أن سـالم بن حسين طرح عَدَل لبـا تراب فى حرمته فى ما تزتقر فيه الحرمـه، والعَدَلى غريم، وإنّ با تراب قفا ولا للحرمـه سلب باقى عنـد بن لشرف قارّ. ولا بلّغ بن لشرف بالشّهود صاب. على ما فى سَوَاس القبيله للحرمه شقِيّه كلّ يوم مِكْيالَيْن ونصّ حبّ؛ وما شَلّه على المَقْفِى ما فيه قافى. وإن لَغِب بالشّهود بن حسين لَشْرَف وجب على اهل با تراب

خَمْسه حَلَّافَه حَتَّامه، أوْلهم دُمَيْدِم وتاليهم لَقْوَر، على با لَهْمَان، يحلفون بالله الرّحمان الرّحيم، مالى السّما برَحْمته، وراسك يا با لَهْمَان، يمين مَطْفِيَه النِّيَار ومُخْلِيَه الدّيار، قاطعت الثَّرَا والثَّرِيَّه — لا طلّع لنا عَدَلِى غَرِيم فى ما تزدقر فيه حرمة بن حسين لشرف، وإنّ عنده من سَلَبْها لا حَدّ ما هُوه حدّ. ولا حلفوا خَراجوا، وإن لَغِبوا كلّهم مَرَدُّهم عندى. هاذا ما حكم به العاقل محمّد بن سَعيد بن عَوْزَر با عوظه. والله يعلم بالصَّوَاب.

(4) *A Document of Procedure*

Sālim bin Ḥusain Lashraf Bā ʻAwḍah (1), and ʻAlī bin Sālim Bā Turāb Dumaidim Bā ʻAwḍah attended the court of Maifaʻah before me (2). They delivered over hostages into the hands of the qaim of Maifaʻah, Muḥammad bin Saʻīd al-Wāḥidī, as a guarantee of one (tribe) to the other, in the (matter of) the scrutiny (3) of the case, and the setting forth of claims (in the customary way of) the tribe of the Ahl Ḥamad bin Dhiyaib (4), according to their precedents (5) and laws. This (action took place) in (the case of) the wife of Sālim bin Ḥusain Bā ʻAwḍah Lashraf and, over and above that, the theft of the sheep and the she-camel (6). I, the qaim of Maifaʻah bring (7) them the judges whom I choose from the Āl Bā ʻAwḍah.

(5) *A Plaint*

Copy of the Plaint of Sālim bin Ḥusain:—

(I bring a plaint) before (8) God, and before you, oh Bin ʻAwzar (9), that my wife ran away to her father's (house), and that I followed her at once, and deposited my pledge (10) for that on account of which my wife is with-held, according to the procedure of the tribe, but Bā Turāb refused any pledge, and did not produce my wife. So help me, and trouble me (11)! What I stole from Bā Turāb

when he was refusing (12), does not cause me to incur any liability for a fine (13), according to that which (comes) within the custom of the Ahl Bā 'Awḍah.

(6) *A Defence*

Copy of the Defence of 'Alī bin Sālim Bā Turāb :—

My defence, oh Bin 'Awzar, is that my " honour " (14) came to me, being beaten, and not having received in full (the clothes and jewellery due to her (15)), and that Bin Lashraf came to me and sat in my house, and I agreed to return (16) him his wife if he would deliver (to her) the woman's clothing and jewellery he still owes her, (and) on account of which the woman is with-held, in accordance with the laws of the tribe ; but he refused to pay, and I am (therefore) before God, and before thee, oh (thou who) givest impartial justice (17).

(7) *A Judgment*

Copy of the Decision of Bin 'Awzar Bā 'Awḍah :—

A decision (in accordance with the circumstances (18)) between Bin Lashraf and the Ahl Bā Turāb is necessary. I have decided that two witnesses for Bin Lashraf, honourable persons, neither parties in opposition (to the other family) nor interested persons, should be produced to the qaim of Maifa'ah, to testify to God, and before the hands of God (19), an absolute and irrevocable testimony, that Sālim bin Ḥusain deposited a pledge for Bā Turāb, in respect of his wife, on account of that for which his wife is with-held, the pledge-holder being responsible (20) ; but that Bā Turāb refused, and that no clothing and jewellery due to the woman remain outstanding with Bin Lashraf. If Bin Lashraf produces the witnesses, according to the usages of the tribe, he will obtain damages for his wife, for each day (21) two measures (22) and a half of grain ; and for that which he took from the person refusing (23) he shall pay no fine.

If Bin Ḥusain Lashraf fails (to produce) witnesses, the Ahl Bā Turāb must (produce) five persons, each individual swearing a single oath (24) by (the saint) Bā Lahmān (25), the first of whom shall be Dumaidim (26) and the second Laḳwar, swearing by God the Merciful the Compassionate who fills the Heavens with his mercy (27), and your head, oh Bā Lahmān, an oath extinguishing fires, emptying houses, cutting off wealth and fortune (28), (that) he did not produce a responsible pledge-holder for us, in the matter of that on account of

which the wife of Bin Ḥusain Lashraf is with-held, and that he (still) owes of her clothing and jewellery the following separately detailed items (29). If they swear, they are acquitted. If all fail (30) they should refer (the case) to me.

This is the decision which the headman Muḥammad bin Sa'īd bin 'Awzar Bā 'Awḍah gave. And God knows what is correct.

NOTES

(1) Note the spelling 'Awḍah or 'Awẓah.

(2) I.e. Muḥ. b. Sa'īd.

(3) I was told that naḳd al-kalām meant scrutiny of the case to see whether it was a sharī'ah or 'ādah case, but I cannot think that was the intention here.

(4) One of the three sub-tribes of the Bā 'Awḍah, the Hal Yamanah, the Āl Biḥārah, and the Hal Dhiyaib. Landberg, *Arabica V*, op. cit., p. 231, names them the Āl Ḥusain b. 'Umar, the Āl 'Alī bin 'Umar, and the Hal Dhiyaib b. 'Umar. They are doubtless the same.

(5) The term sawālif seems to be of general use amongst Arab tribes, and is even found in the Sudan amongst the Beja (J. S. Trimingham, *Islam in the Sudan* (London, 1949), p. 180, footnote). The phrase above might also be rendered, " according to ancient custom and law."

(6) I.e. the theft of these animals by Lashraf from Bā Turāb as a sort of forcible compensation when the latter withheld Lashraf's wife. Lashraf, even if he had only paid over part of the agreed dowry, was nevertheless being deprived of services for which payment had been made.

(7) Note the change to the present tense, a not infrequent occurrence in narrative.

(8) As in the other plaint bi-'llāh is used, whereas in other places 'ind (at) is used. It might be better here to translate the phrase as " by God ".

(9) Bin 'Awzar is the muḳaddam (chief) of the Ba 'Awḍah, a stoutish man, light skinned, for a Wāḥidī tribesman.

(10) This pledge may be placed in the hands of any responsible person. Lashraf deposits a pledge for the unpaid portion of the dowry with a third party. He does not, of course, place it in the hands of his father-in-law, in the hope that the latter would return his wife.

(11) I.e. " to produce witnesses ", as in the previous set of documents.

(12) I.e. to return Bin Lashraf's wife. The sense is clear though the word is difficult.

(13) The term employed, ḳāfī, was explained to me as being the responsibility to return a stolen camel (and here, no doubt, the sheep also), and to pay a fine of five ḳurūsh (dollars) in addition. See note 12 to document 1.

(14) The term which has been translated as " honour " is actually the word 'ār, which is equivalent to the word 'aib, a well-known term, which might perhaps be rendered as " impugnment of personal or tribal honour ". It is used here as a circumlocution for " my daughter ", as the tribesman dislikes reference to a female relative in the presence of others. It is, in fact, a term used to mean any female relative, because one's honour can be impugned in them. C. von Landberg, *Ḥaḍramoût* (Leiden, 1901), p. 173, gives the term ma'ūrah from the same root, as " la femme parce qu'elle est le 'ār de l'homme, la chose qu'il doit défendre Le djār = rabī' ou nazīl est aussi mon 'ār ", etc.

It is possible that a tribesman only cares about the sexual conduct of his womenfolk insofar as it reflects upon his own honour, though any tribesman here would impress on one, if questioned, the extreme measures he would take in the case of any sexual misdemeanour on the part of his womenfolk. In Daw'an, however, I was informed of a type of tribal custom where, if a tribesman finds his wife in *flagrante delicto* with another, he demands payment with damages, to divorce the woman, who is then married by the adulterer. This is known as Irṭibāṭ, and is mentioned by 'Alī bin Aḥmad bin Sa'īd Bā Ṣabrain in his Djumal min al-Muhimmāt al-Dīnīyah (written 1294 H.), a copy of which is described in *BSOAS.* (1951), op. cit. A Wāḥidī Sultan with a well-deserved reputation for gallantry, whispered to me that the sister of one of the individuals whose name figures in this collection had a reputation not free from reproach. I find it difficult, however, to believe that Wāḥidī tribeswomen can indulge in secret affairs of the heart, owing to the virtual impossibility of concealment. Ṭabarī, Tafsīr, v, 14, quotes Ibn 'Abbās as saying of the Arabs of the Djāhilīya, " They used to forbid (ḥaram) such adultery (zinā) as appeared, but to allow (istaḥall) what was hidden, saying, ' concerning that which appears, it is disgrace (lu'm),

but as for what is hidden, that does not matter.' " This reveals the essence of the tribesman's attitude to the subject.

In this connection, the gist of a conversation I had with the new Sultan Nāṣir may be quoted. The women of the sultans never leave the house, except perhaps two or three times in the year, for a funeral, feast, etc., when they may visit another house in 'Azzān.

A woman is then accompanied by her husband, leading the way, the woman following at a little distance. If the Sultan did not accompany his wife, the Bedouin meeting her, might cut off an ear or a lock of hair as an insult ('ār) to the Sultans. Their women do not laugh or talk much in the village of 'Azzān itself lest they be heard by Bedouin, who would say such conduct was unseemly. Should the Sultan's wife go to the window to look out on account of some noise in the street, he would reprimand her sharply and ask why she had done so.

Sultans usually, it seems, marry tribeswomen. Sultan Nāṣir himself was betrothed to a girl of the Āl Liswad, near Ḥabbān, and I was present at the betrothal visit and feast. Sultans can, of course, marry from all sections of the population except the Saiyids. In 'Azzān, the 'Askar al-Ṣulṭān (Soldiers of the Sultan), now mostly merchants owning a little land (ṭīn), and no longer regarded as tribesmen, seem to allow their women to come and go more freely than the Sultans. The 'abīd women move at their liberty, unveiled. In the tall dārs here, women live on the floor below the roof, and on the roof itself during the cooler portions of the day. Visiting a mashā'ikh house in Ruḍūm, our host preceded us upstairs shouting " ṭarīḳ " as he went, to avert the women, as is common practice in South Arabia. In general, women of noble blood are much less restricted in Tarīm and Saiwūn than in Wāḥidī country, but wives of the Shibām merchants seem more closely confined, like women of the Wāḥidī towns.

(15) Lit. " shortage ", but it refers to what is known in Wāḥidī territory and elsewhere as ḳashsh (see Landberg, *Gl. Dath.*), i.e. appurtenances of a woman, such as jewellery, clothing, and cosmetics, kept in a wooden box roughly painted in traditional style. These are agreed upon in the marriage settlement, but actually delivered later, or at least the full amount is usually delivered later. In Wāḥidī houses the woman, i.e. wife of the owner, has a little room of her own (khalwah), sometimes used for more honoured

guests who may wish a little privacy, or where a few friends are entertained when the main reception room is not used. The woman is not, of course, present on these occasions. In this room she keeps her silver ornaments in the wooden box, and the walls are hung with a great variety of household gear, all this known as shakkah ; there are basket containers of all sorts and sizes, gaily coloured palm-fibre trays (tafālah) for rice, etc., cloth or food stored in baskets, wooden bowls, incense burners, the cosmetic-pots, often old powder-horns of metal, or beaded glass bottles like African work, leather pillows, Japanese enamelled plates, and innumerable odds and ends, nearly all hung on the walls. The floor is covered with matting and the whole, when new, is pleasing.

(16) The sense of the context is clear, but the verb waḳḳaf is a little difficult. The reading is, no doubt, correct, as the texts were checked several times. One might otherwise have expected waffaḳt, but perhaps, by transposition, this dialect gives waḳḳaf the sense of waffaḳ.

(17) Bin 'Awzar is addressed here.

(18) This is how the term faṣl (lit. *separation*) was explained. It was also explained by the term ḥukm, which appears in the title of this document, but cf. vocabulary to the texts.

(19) This should not, I think, be regarded as an anthropomorphic phrase, but merely as Arabic idiom.

(20) Presumably to pay over the pledge, if required. Vide supra.

(21) I.e. for each day that his wife has been withheld by her father, the latter paying over the damages. Conversely, a woman who has fled to her people cannot re-marry or claim support from her husband (Landberg, *Ḥaḍramoût*, 163).

(22) I assume that a mikyāl is the same as a kailah. Wāḥidī cubic measures are as follows :—

2 kailahs (pl. akyāl)	1 mudd
2 mudds	1 mīzarah (maizaraḥ)
2 maizarahs	1 ṣā'
2 ṣā'	1 dhahab (pl. dhihāb)

According to Landberg, *Arabica V*, op. cit., p. 292, the dhahab is equal to eight Aden bushels. My informants said it was equivalent to 12 muṣrās or 2 ḳahāwils.

(23) He must, of course, return the stolen animals.

(24) One individual ḥallāfah or oath-giver might take five separate

oaths, but five ḥallāfah ḥattāmahs will only take a single oath each, this, no doubt, being regarded as a more stringent oath than the former type. It is necessary to insert ḥattāmah to specify that five different persons shall take the oath.

(25) Bā Lahmān is the walī (saint) at Djōl al-Shaikh. The present manṣab there is Shaikh 'Alī b. Ḳāsim b. 'Abd al-Māni', the latter being the family name of the Mashā'ikh there. Cf. Landberg, *Arabica V*, op. cit., p. 172, where it is noted that the manṣab of that time was a mubashshi', i.e. one able to perform trial by ordeal. For bish'ah see also 'Ārif al-'Ārif, *al-Ḳaḍā' bain al-Badw* (Jerusalem, 1933), p. 95, and Landberg, *Gl. Dath.* The 'Abd al-Māni' have "spiritual influence" over the Bā 'Awḍah. Landberg's visit to Djōl al-Shaikh was remembered. The shaikh asked him for 200 riyāls as a gift for having entertained him.

(26) Dumaidim is the father of Bā Turāb, but I have not recorded who Laḳwar is, perhaps he may be the uncle of Bā Turāb.

(27) Raḥmah, which has also the sense of "rain". In Ḥaḍramawt it is said: "Ṣulṭān Ḥaḍramawt al-raḥmah," i.e. "The sultan of Ḥaḍramawt is Rain".

(28) Tharīyah, here translated as "fortune", was explained to me as meaning "inheritance". It seems to me that the phrase is really a jingle, but perhaps the word dhurrīyah offspring is also in the minds of the speakers. For types of oaths in North Arabia, see "'Ārif al-'Ārif", op. cit., pp. 72 ff.

(29) Lit. "to the limit of what is a limit".

(30) I.e. if neither party is able to produce the required number of witnesses.

Summary

This case does not seem to me to be inconsistent with sharī'ah law, while in two important points it agrees exactly with principles enunciated in the fourteenth century *Aḥkām al-Man'ah* (cf. supra) which tends to bear out the contention of the author of that work, namely that Man'ah is not inconsistent with sharī'ah but an extension of it. On fol. 72*b* the author says that the plaintiff in all the Man'ah laws has the onus of the proof, and on him who denies the charge is the necessity for taking the oath to this effect. The Aḥkām al-Man'ah also states (fol. 57*b*) that "whosoever takes away his (relative-in-law's) wife from the house of his relative-in-law (ṣihr) without cause, and without fault on the part of the husband, has done wrong, and

must pay restitution (niṣfah) to the extent of a ram worth ten dirhams". Fines prescribed in special cases follow. Comparison may be made also with the section on Ḳasāmah in Bukhārī, Ṣaḥīḥ (trans. O. Houdas (Paris, 1914), iv, 414.

Appendix

The Appointment of a Manṣab of the Mashā'ikh

The manṣab in Southern Arabia is the ruler of the sacred enclaves known as Ḥawṭah, independent entities owing obedience to no temporal overlord. The Ḥawṭah is a centre for the tribes, neutral territory upon which they can meet to trade or settle disputes.[1] The manṣab is naturally a person of great importance in the country, and acts as impartial mediator between warring tribes. In turn, the tribes have some say in the election of a manṣab of Mashā'ikh, in the Wāḥidī area, but among the Sādah in Ḥaḍramawt the manṣabate seems usually to be hereditary. The notes upon which this appendix is based were taken from the Manṣab of Ṣa'īd himself, Shaikh 'Abdullāh bin Muḥammad Bā Ḳādir, of the Bā Ḳādir Mashā'ikh, descended from Ḳādir bin 'Abdullāh, who is buried at Ṣa'īd.

When a manṣab dies, a ḥawīk (khādim, servant) or ṣabī (of the non-Arab but Arabic-speaking submerged race known in this part of South Arabia as Ṣubyān) is sent with a note to all districts to inform the people. The ḳabā'il (tribes), ra'āyā (peasants and craftsmen, etc.), sultans, and ṣubyān collect at the village of the deceased. They recite the Koran over his grave, and are entertained to a feast known as walīmat al-naḳaḍ,[2] the expenses of which are borne by the brother or son of the late manṣab.

The chiefs of the land (ru'asā 'l-Arḍ) collect and select a new manṣab, that is to say the principal persons and the representatives of the various classes. The ra'āyā have no real head of their class, but they elect (istankhabū) one. Notables of all sections then, including the Mashā'ikh, collect in a circle in the open. All must consent to the election. The dawlah (sultans) are said to be present only for consultation, as the election is a matter for the people of the district, but I was informed that Sultan Ṣāliḥ bin Muḥsin of 'Azzān

[1] For the Ḥawṭah and the Ḥabaṭ, material from Landberg has been utilized in articles in the Encyl. of Islam. These might be consulted. Ṣa'īd is a Ḥabaṭ.

[2] naḳaḍ *to go away* (according to my informants). Gl. Dath. gives it the sense of *to annul, untie.*

was a supporter (ḥamīl) at the election of the Shaikh of Al-Rawḍah. I am not sure whether potential manṣabs would be present at the election, but I think they can hardly be present at the preliminary discussions.

Among the Bin 'Abd al-Māni', there are three branches (shu'ūb). and the manṣabate passes from one branch to another in rotation, The other Mashā'ikh have the office of manṣab confined to one house (dār) only.[1]

When the manṣab has been elected, one of the manṣab's own fakhīdhah (section) walks round the assembled circle several times, carrying a rosary, and then throws it over the head of the chosen person, saying: " This is our father " (Hādhā abū-nā). All present inform the newly elected shaikh that they wish him to be their manṣab. The tribesmen like a manṣab to be generous with the funds at his disposal, but for his functions, clearly he must be endowed with other qualities also.

After this, all go and visit the walī (saint) whose descendant the manṣab is, and the manṣab enters the ḳubbah (domed tomb) with all the people. They touch the ḳafaṣ (wooden or adobe ark-shaped canopy over the tomb), and go round the shawāhid (either the four corner-posts of the canopy, or the projecting upright stones on top of the tomb),[2] beat drums, and sing *mūkhadhs* (panegyrics of the saint), a sort of chant. From here all proceed to the manṣab's house and entertainment (ḍiyāfah) is prepared for them. They feast, and each individual gives the manṣab a present, every man according to his means (kullain bi-ḳadaruh), to help to defray the expenses of the occasion.

When he is appointed, conditions are made with a manṣab. Shaikh 'Abdullāh Bā Ḳādir showed me the agreement made at his own election, but I did not find it of sufficient interest to transcribe and examine in the limited time at my disposal. I did note its principal terms. The manṣab entertains all who come. He judges between the tribes and the ra'āyā. According to usual practice in South Arabia, the tribes must help the manṣab against a wrong-

[1] For the Mashā'ikh of the Wāḥidī area, see Landberg, *Arabica V*, op. cit., pp. 189 ff. The Mashā'ikh of Ṣa'īd, Djōl al-Shaikh, al-Ḥawṭah, and Al-Rawḍah, are all descended from a common ancestor, and they claim descent from 'Abd al-Ḳādir al-Djīlānī.

[2] For some notes and sketches of the shapes of tombs, see my *The Cemeteries of Tarīm* (Muséon, (Louvain, 1949)).

doer or pay a fine. The main part of the agreement was largely taken up with a list of fines for offences by tribesmen (ḳabā'il) against miskīns (peasants). If, for example, the ḳabīlī should steal an ox, he must return the ox and a sum equivalent to its value, half (nāṣifah) to the manṣab, and half to the robbed person (manhūb). If a ḳabīlī commits a misdemeanour, the usual procedure is to interdict him from the sūḳ (market), which in the case of Ḥawṭat al-Faḳīh 'Alī is an important sanctuary. The economic insufficiency of the tribesman is thus apparent, as he must have recourse to the market, and this is a powerful weapon in the hands of a manṣab.

Glossary to the Text

ذميم dimin. of ذنم *a sort of bird of the mountains.*

نقد الكلام نقد *scrutiny of a case.* Gl. Dath., نقد *avoir du jugement.* Lane, "suitableness of a judgment, and of what involves or implies a judgment."

حق *Setting forth of claims.*

يومها *At once, quickly.*

ازتقر *infra* ازدقر *to be held firm, withheld.* Cf. Gl. Dath., for allied stems.

سرح *Bring forth, produce.* Cf. Gl. Dath.

تيب Note this type of Imperative common in Ḥaḍramawt, etc.

مقفى Part. Act. Stem IV of قفا, u. Note the vowel of the preformative and compare مطفيه *infra.* Gl. Dath. افق *tourner le dos, s'en aller, partir.* Thence it must mean *to refuse.* Cf. قفا *supra.*

قافى Gl. Dath., gives قفا as *injurier*, and قفيّ *injure*, and it may be from this sense that قافى is derived. It means here *a fine for the theft of an animal, paid as compensation to the owner.*

زرعة *Custom.* Cf. زريم *an arbitrator* according to customary law. Cf. Djāḥiẓ, *Ḥayawān* (Cairo, 1356 H.), i, 167, where women are described as العار الاكبر.

عار *Female relative*, explained in notes to translation.

عدّه *A beating.* Cf. Gl. Dath.

تقصور Verbal N. Stem II, as frequently in dialect. One says, فلان قصّر فى فلان *A. has not fulfilled his duty by B.* Here it means *not having received the ḳashsh owed her.*

وقف See notes to translation.

سَلَب Usually *arms*, but here *women's appurtenances*, i.e. clothing, jewellery, ornaments, cosmetics. Syn. فَتَن. For both words see Gl. Dath.

فَصْل Syn. حُكْم, *sentence, judgment.* Cf. Kor. LXXXVI. 13: "distinguishing between what is true and what is false."

عَدْل *A just person*, as in Class.

قِسْم pl. قُسَمَا *interested persons.* Cf. *supra.*

قَارّ *Outstanding.*

صاب i.e. اصاب.

شَقِيَّة *Compensation for injury, damages.* Gl. Dath, *gages.*

لَغِب *To fail.* Gl. Dath., *être fatigué.*

حَلَّافَة Lane, *swearing, that swears much or often.*

حَتَّانَة Explained in notes to translation.

تَالِى *Second.* Cf. Gl. Dath.

لَقْرَر i.e. الأَقْرَر *The obstinate.*

مَطْفِيَة Part. Act. أَطْفَا.

ثَرَا Class. ثَرَاء *wealth.*

ثَرِيَّة Explained as *inheritance.* See notes to translation.

خراجوا i.e. خرجوا, the alif indicating a stressed penultimate syllable only, an error of orthography. *To emerge from a case, to be acquitted*, etc. This verb so used, is a technical term of tribal law, used also in other stems. Various forms of this root appear in several documents in my collection.

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ADDENDA

P.34 Al-Aḥnaf b. Qays was addressed as Yā Bā (=Abū) Baḥr; he was a Tamīmī (al-Mufaḍḍal b. Salamah, *Mufākharah*, ed. C.A. Storey, Leyden, 1915, 242).

P.39 Major Jock Snell told me subsequently that Bin Laʿjam lost the case. The winners hired a man to construct another channel. Note 21 (p.44) does not apply as the case was over the actual channel.

P.40 ʿAlawī b. Ṭāhir al-Ḥaddād, *al-Shāmil*, 76, alludes to an ʿAwlaqī Sultan Ṣalāḥ b. Bā Ḳab at Yashbum in 959/1552, almost certainly this person. The spelling of Ḳab is uncertain. Al-Shillī's *al-Sanā' al-bāhir* (Mss.) alludes to a Sultan of Mayfaʿah, Ibn Sīdah, probably to be identified with Ibn Siddah of the Ḥaḍramī historian Bā Faqīh al-Shiḥrī.

P.44 Muḥ. b. Hāshim, *Tārīkh al-Dawlat al-Kathīriyyah*, 1367/1948, renders *withr* as *ʿahd*. *Bulgh* looks like a plural of *ablagh*, a colloquial usage?

P.46 *Yā* – I noted *Yā hū*, which one do you mean? said to me by a Yarīmī.

P.169 *Thariyyah*, cf. al-Jāḥiẓ, *al-Ḥayawān*, VI, 445 – *yamīn dhī thariyyah lam yakfur. Tharā & thariyyah* seem simply to mean moist soil, earth.